

## APPENDIX N

### Brief narrative on open CLLAS claims with ground up reserves in excess of \$2,000,000 (December 31, 2022):

#### 2005-177

This is a Quebec claim, so there is \$10 million in underlying insurance available from the *Barreau*. The claimant is a large company for which the insured acted in defending a series of product liability claims that extended over many years. Several actions were defended without the claimant's insurers contributing to defence costs. The claimant instructed the insured to sue those insurers. The allegation is that the insured may not have amended the actions against the insurers to include additional insurers as time went by, and limitation periods have now expired. The legal costs associated with the protracted litigation have been significant.

The primary insurer attended a mediation in December 2018 and made an offer well within the primary limits. The matter did not settle but the claimant has asked that the tolling agreement be extended three months in order to obtain instructions for a counteroffer.

The claimant subsequently made a proposal under the *Companies Creditors Arrangement Act*. The Ontario Courts stayed all proceedings by or against the claimant. The claimant has not renewed the tolling agreement. There had been some discussion between the parties about continued mediation, but the primary insurer indicated that it would not participate unless the claimant considerably moderates its settlement expectations. There have been no further developments and the matter remains in abeyance.

#### 2008-113

Between 1999 and 2003, the insured was retained to provide tax opinions about the syndication of several charitable donation programs to Canadian residents. The charitable donation program was built on the concept that leasehold timeshare weeks at various resorts were gifted to a Trust. Canadian residents could apply to become beneficiaries of the Trust. The trustee of the Trust (the Trustee) was responsible for reviewing and accepting applications for beneficiaries and making distributions of time share units to qualifying beneficiaries (Participants). Participants were then requested, but not compelled, to make a donation of timeshare units to one of a select number of charities. Participants would then receive a tax credit for the donation.

In 2004, the Canadian Revenue Agency (CRA) took an increasingly aggressive stand on charitable donation programs. Many ensuing judicial decisions disallowed donations made through these and other programs. The primary basis of disallowance or reduction of the tax credit was that the actual fair market value of the donation was less than the appraised amount put forward by the promoters.

A class proceeding was commenced against the firm by donors who were reassessed by CRA. The basis of the claim is that the donation programs could not have proceeded without the insured's opinion. CLLAS has brought Third Party Claims against several advisors to members of the class.

Continued examination of the representative plaintiff was not helpful for the claimant's case.

The matter was settled at mediation in the autumn of 2022 for \$8.25M to which CLLAS contributed \$7.2M. Third Party defendants contributed \$1.05M.

## 2010-165

The firm represented the claimant in a dispute with a builder for faulty construction of a warehouse facility under a Design-Build Agreement. The firm commenced an action against the builder in 2004. In 2009, the builder brought a motion to the court to strike the action on the basis that the dispute should have proceeded by arbitration under the Design-Build Agreement. The provincial Court of Appeal agreed, and the claimant's action was struck. By this time, the limitation period had tolled and the claimant was unable to commence an arbitration proceeding. The claimant has sued the firm for loss of its right of action against the builder.

The firm was unsuccessful on a motion for summary judgment on the issue that the limitation tolled while the matter was with other counsel. The firm was unsuccessful on appeal and was denied leave to appeal to the Supreme Court of Canada.

The claimant alleged damages in excess of \$10M. The matter was settled for \$1.34M to which CLLAS contributed \$1.25M.

## 2011-008

The insured represented two high net-worth individuals in providing tax advice between 1995 and 2001. The claimants established a non-resident corporation through which the claimants received payments purportedly for consulting services although no such services were provided. The Canadian Revenue Agency (CRA) issued reassessments against the claimant for \$71M each. After protracted litigation, the claimants settled with CRA for \$14.5M each.

The *Fonds assure la responsabilité professionnelle des membres du Barreau du Québec* (the Barreau), the primary insurer, agreed to mediation with the claimants in November 2022. A former Supreme Court of Canada justice acted as mediator. The parties appear to have reached a settlement of \$8.75M. The Barreau has underlying limits of \$10M so CLLAS will not be contributing to the settlement. However, there remains the possibility that the tax authorities for the Province of Quebec might similarly reassess the claimants.

## 2014-131

The insured firm acted for a pay-day lender. Pay-day lending is regulated under provincial statute. The provincial government had taken aim at the lender for alleged predatory lending practices. The lender began marketing a different product which it believed put it beyond the ambit of the provincial statute. The lender voluntarily did not renew its provincial licence. The provincial government brought an application for a declaration that the lender's new product did not put the lender beyond the government's regulation. The court found for the government. The court's decision led to the immediate collapse of the lender leaving many investors and creditors hanging.

The lender's receiver commenced an action against the insured firm, the lender's financial advisor and the lender's auditor for alleged negligent advice.

All defendants brought motions for summary judgment. The court denied the motions for summary judgment.

Due to the Covid-19 pandemic, the parties had to readjust the timetable for the litigation. The parties were scheduled to complete Examinations for Discovery by the end of October 2021 but that did not occur as production from the claimant is not complete.

The court has approved a litigation funding agreement for the claimant. The parties have now agreed to a revised litigation timetable. The parties are proceeding with documentary disclosure.

## **2014-134**

The insured acted for the Board of Trustees for a real estate investment trust (REIT) on the purchase of certain investment properties.

The REIT is publicly traded on the Toronto Stock Exchange ("TSX"), and is managed by the Board of Trustees. The purchase in question had been authorized by the Trustees, without a vote of unitholders of the REIT. The transaction was subsequently unwound by the Trustees when they learned certain facts after closing that persuaded them that the interim CEO of the REIT and the Vendor of the subject properties were "related persons" or "acting together" as defined under the applicable TSX rules and *Securities Act* regulations. Because of this revelation, the Trustees determined that a unitholder vote on the transaction ought to have been held.

The price of the units declined after the unwind. A class proceeding has been commenced on behalf of a class comprised of unitholders of the REIT for the loss of unit value arising from the revelations. The insured was released from the class action but there remain pending claims by the Trustees for alleged negligent advice with respect to the transaction and the former CEO for breach of fiduciary duty and reputational damages.

The underlying class proceeding was settled by the D&O insurers for the REIT. The REIT's claim against the insured firm was settled for \$2.5 million of which CLLAS paid \$1.9 million. The only matter not covered by the settlement was a personal claim by the former CEO.

After a long period of dormancy, the personal claim of the former CEO reactivated. The parties have completed oral examinations. It is unclear how our Insured's actions sound in damages to the claimant. The parties are completing answers to undertakings.

## **2016-023**

The claimant is a commercial lender. The claimant had taken a mortgage on a commercial property. A third party obtained a Certificate of Pending Litigation (CPL) against the subject property. Although the CPL was of dubious merit, the insured inadvertently consented to an order which permitted the CPL to remain on title. The claimant had to pay off the third party to have the CPL removed. Because the CPL was on title, the claimant lost a potential buyer for the subject property. Because of local market conditions, the property remained unsold for several years. The claimant has sued the insured for damages including the cost to remove the CPL, carrying costs, lost profit, and costs.

There was an unsuccessful mediation in December 2020 but there has been no communication from the claimant's counsel since. We have confirmed that the claimant completed the sale of the subject property at a loss. The claimant's counsel recently resurfaced and invited further negotiation. We provided counsel to make a settlement offer reiterating our position from the mediation.

## **2016-107 and 2016-108**

These claims relate to two class proceeding commenced in the Provinces of Saskatchewan and Ontario with respect to a charitable donation and tax shelter program which involved taxpayers making cash and in-kind donations to charities in exchange for tax receipts. The insured in 2016-108 assisted the promoter in setting up the program. The insured in 2016-107 assisted the promoter in implementing the program.

Taxpayers claimed charitable donation tax credits under the program beginning in or about the 2004 tax year. The Canada Revenue Agency (CRA) delivered Notices of Reassessment in respect of the tax credits beginning in or about 2007 and, ultimately, disallowed them. Taxpayers advanced test cases challenging the CRA's decision. The Tax Court

of Canada released reasons for judgment regarding two taxpayers on October 19, 2015 that upheld the reassessments.

More than 100 donors, including the Representative Plaintiff in the class proceeding, sued the CRA in the Federal Court for negligence. In early 2016, the Federal Court of Appeal struck the Statement of Claim and dismissed the action.

In March 2016, the proposed class proceeding in the Province of Saskatchewan was commenced on behalf of donors against 38 defendants, including the CRA, the promoters and administrators of the program, and various accountants and lawyers. In September 2017, another proposed class proceeding was commenced in the Province of Ontario.

The Ontario action was certified upon the agreement of the parties. The Saskatchewan action proceeded to a certification hearing in December 2019. The Saskatchewan court denied certification. The claimant undertook not to appeal the decision if the defendants did not seek costs. That agreement was reached, and the Saskatchewan aspect of the claims is at an end.

The underlying insurer (LAWPRO) limits were exhausted on defence costs on file 2016-107 in the fourth quarter of 2020, triggering CLLAS' reimbursement of defence costs incurred by the insured firm for engaging counsel at hourly rates above those covered by the underlying insurer. We expect the underlying limits on file 2016-108 to be similarly exhausted in the near future.

The Ontario action proceeded to several days of Examination for Discovery on the preliminary issues of solicitor-client privilege. The claimant brought a motion to compel answers to questions refused on the basis of privilege. We were successful on the motion. The claimant appealed the decision, and the Ontario Divisional Court upheld the decision.

The Case Management judge denied our request to schedule summary judgment motions and ordered that the parties complete Examinations for Discovery first.

## **2017-091**

This is a social engineering loss. The firm acted for the vendor of condominiums. A unit sold of \$2.5 million and the insured was instructed to wire the closing funds to the client's mortgage company in partial discharge of its mortgage. Someone managed to get in the middle of the email traffic and advised the firm (via an email address that closely, but not exactly, matched that of the client) to wire the funds to a Hong Kong bank account. Of the \$2.5 million, about \$800,00 has been recovered from the Hong Kong bank. We endeavored to determine if the mortgage company and/or the firm's crime insurer will contribute to the settlement.

The firm's crime insurer successfully resisted a coverage application by the firm. The mortgage company rejected efforts to negotiate a settlement short of litigation. Counsel has commenced an action against the mortgage company. Pleadings have been delivered and counsel is preparing Affidavits of Documents. The mortgage company produced an Affidavit of Documents but asserted privilege with respect to its internal systems audit. We have instructed counsel to bring a motion to compel production of that report.

## **2020-001**

The insured acted for the claimant, a producer of agricultural products, in the sale of its Canadian and U.S. distribution rights to a large U.S. entity. The agreement provided that the distributor would commit to minimum annual purchases of product from the claimant. Due to a market downturn, the distributor fell far short of the minimum purchase requirements.

The claimant made demand for payment of the minimum purchases. The distributor took the position that, pursuant to the language of the distribution agreement, its liability is limited to the amount of product actually purchased in the previous year. This position is at odds with the claimant's intention and another provision of the agreement.

The claimant retained new counsel who takes the position that the insured was negligent in the drafting of the agreement such that there is an ambiguity which severely prejudices the claimant's bargaining power and ability to recover from the distributor. The claimant and distributor reached a settlement which involved new distribution agreements. The claimant has commenced an action against the insured firm for alleged losses.

The claimant's counsel was appointed to the bench and the matter was in abeyance for an extended period. Examinations for Discovery were conducted in January 2023. The claimant has delivered expert reports on standard of care and damages. The claimant alleges damages of \$24M. Counsel has retained responding experts. Trial is scheduled for June 2023.

## **2022-109**

The insured acted as counsel for the claimant, a financial services regulator, in an action commenced in March 2019 against certain former officers and directors of an insolvent credit union. The claimant claimed that former senior management of the credit union engaged in misconduct which was fraudulent and in breach of their fiduciary duties. The claimant also sought damages for negligence and breach of fiduciary duty against former members of the Board of Directors of the credit union who were not directly implicated in the misconduct.

The defendants brought motions for an order staying the action on the basis that the claimant abused the process of the court by entering into settlement agreements with certain defendants that were not immediately disclosed to the remaining parties in breach of the principles established by the Ontario Court of Appeal in *Aecon v. Stephenson* (the *Aecon* motions). The claimant and LAWPRO, the primary insurer, agreed that LAWPRO appointed counsel would argue the *Aecon* motions (and any appeal) at LAWPRO's expense. The motions were scheduled to be heard on December 19, 2022, but were adjourned to March 2023.

A mediation of the action proceeded in late November 2022 and partial settlement was reached. The mediator continued to work with the parties. A global settlement in the amount of approximately \$27M was reached. To this, the insured contributed \$3.5M of which LAWPRO paid its remaining limits of approximately \$920,000 and CLLAS contributed the balance.